

Design-Build-Finance Industry Finance Meeting

Questions asked by attendees and MDOT responses as documented in the Meeting.

May 29, 2008 from 2:30 pm to 4:00 pm
Lansing Central Office

- 1 What assurances and/or guarantees can MDOT provide to Design Build Finance (DBF) teams that payment will be made? What if the State does not have funds available in 2011?
Answer MDOT will make payments in accordance with the contracts. Payments are backed by the Michigan Department of Transportation. MDOT has appropriated funds in this fiscal year and will have the spending authority to cover any costs incurred by these projects.
- 2 Please be as specific as possible as to source of funds for the project.
Answer Both DBF pilot projects are paid with 90% Federal and 10% State funds. MDOT will have a signed contract obligating MDOT to pay the Contractor in accordance with the schedule assuming the contractor performs.
- 3 Will anything stop payment after 'Substantial Completion'?
Answer Yes. The projects will have conditions in the proposal that would stop the incremental payments. The project must achieve final acceptance with the time frames specified in the contract to continue the incremental payments. The M-21 DBF will have language in Book 2 Section 19 that could impact the incremental payments.
- 4 If Substantial Completion is completed earlier will MDOT pay earlier?
Answer Yes, the first payment will be made at the time of Substantial Completion. After the initial payment, incremental payments and the final payment will be made according to the terms of the contract.
- 5 How will the acceptance of a Sub-Contractors work be determined in order to meet the prompt payment requirements in the contract?
Answer The DBF projects will have "prompt payment" provisions that need to be followed. The prime Contractor has control over their Sub-Contractors and will need to have a level of involvement with their Sub-Contractor's work that is adequate to process payments to the Sub-Contractors when their work is completed. MDOT will have Construction Engineering on the DBF project at a level similar to design-bid-build projects, and will be able to verify if the work is completed if there is a dispute.
- 6 Does prompt payment apply if the subcontractor elects to defer payment along with the prime contractor?
Answer The Sub may not elect deferred payment; prompt payment provisions applies to all subcontractor's work.
7. Why is MDOT moving forward with DBF projects at this point in time?
Answer MDOT is piloting these projects to evaluate their use as possible methods of contracting in the future, and may be a methodology to utilize potential funds in the future.
- 8 How will bonds be closed/released?
Answer MDOT Response – MDOT will use a process similar to the current process of releasing bonds. Typically, the bonds are released when the project has achieved final acceptance. Warranty Bonds and Maintenance Bonds (for Landscaping items) will be released when the terms specified in the project proposals are achieved.
- 9 What bonds are required for warranty work?
Answer The RFP's will have information on Warranties and the bonds required for the work.
- 10 What happens if the pavement falls apart on I-69? Who pays for this and how?

- Answer The pavement warranties are specified in the I-69 RFP. If the pavement fails MDOT will proceed against the bond holder.
- 11 Will there be any warranties on the M-21 Bridge Project?
Answer Field Bridge Coating Systems will require a warranty according to MDOT standards.
- 12 How will scope change be handled?
Answer MDOT Response – Design-Build projects typically do not have extra costs that traditional Design-Bid-Build projects do. Any “extra’s” due to design errors or omissions are the responsibility of the Contractor. If MDOT directs a change that is not a part of the original scope of the project then MDOT and the Contractor will negotiate a price. Any increase or decrease in the price of the contract will be paid at the time of the final payment.
- 13 Will there be escrow language in the RFP?
Answer Yes. The language is as follows: If the Contractor expressly and irrevocably requests, authorizes and directs MDOT to process, issue and transmit any and all payments otherwise payable directly to the Contractor, to be processed, issued and transmitted to a Specific Escrow Account established for the Project, in lieu of paying the contractor directly, MDOT will grant the request upon execution of an MDOT prepared form, properly executed by MDOT, the Contractor, the Contractor's Lender, the Contractor's Surety, and any other necessary parties.
- 14 Who pays for the escrow agreement?
Answer MDOT will not pay to establish the escrow account. Any costs associated with an escrow account are the responsibility of the Contractor.
- 16 Can or should the Contractor request an escrow approach up front?
Answer MDOT will provide a sample escrow agreement. Contractors can request use of a escrow payment arrangement prior to execution of the contract.
- 17 How does a 4 party escrow work?
Answer MDOT will deposit payments, in the amounts and dates established in the deferred payment schedule, Book 1 Section 11, into the escrow account. The other three parties need to develop a separate agreement to determine how the money will be disbursed from the escrow account.
- 18 Will MDOT work directly with a bank?
Answer No. MDOT will contract with the Contractor and the Contractor will need to develop their agreement with the lender.
- 19 Can the bank sell the receivable as a bond after substantial completion and leave it to the bond holder?
Answer MDOT does not have a position on this. That is up to the prime Contractor and the lender to determine the financing requirements.
- 20 Would MDOT use joint payments to the prime contractor and the lender?
Answer This could be acceptable to MDOT where payments are made with a single warrant made payable to two payees but would require surety bond holder agreement.
- 21 What is I-69 proposal schedule?
Answer The RFP is scheduled to be posted on the MDOT website on June 13, 2008. The bids and technical proposal are due approximately 8 weeks later.
- 22 How will addendums be handled?
Answer The Typical addendum process will be utilized on the I-69 DBF project. The Short-listed Contractors will be notified of addendums and how to receive them when they are posted for the M-21 DBF project.

- 23 Can joint payments be used to ensure the bank is not at risk?
Answer MDOT would agree to making the payments payable to both contractor and bank with Surety Bond holder approval.
- 24 Is there anything in place that the Contractor can submit how they will fund the project to get approval prior to submission since the financial end is graded on a pass-fail?
Answer No, the Contractor's will need to submit their financial information at the time specified in the proposal.